

“The Association Is for the Direct Attack”: The Militant Context of the NAACP Challenge to *Plessy*

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I. INTRODUCTION

Any interrogation into the political setting surrounding the issuance of the *Brown v. Board of Education*¹ decision by the United States Supreme Court simultaneously challenges the investigator to attempt to understand more intimately the question of what set of historical factors created the climate for the *Brown* decision and to confront the conventional wisdom that this decision led to the creation of the Civil Rights movement. This paper takes the position that the normal course of race relations in the first fifty years of the twentieth century was interrupted by World War II and that the cosmopolitan factors that it unleashed were vital to the creation of new possibilities that America could also break internally with its racially extremist past.

The germ of this theory was articulated by Professor Doug McAdam in his study of the origins of the Civil Rights movement in that it envisioned the creation of a historical “opportunity for change,” which was taken advantage of by the organizational structure of the black community.² McAdam suggested that any change in the broad social processes or assumptions upon which the political establishment existed caused a shift in the center of gravity, creating new opportunities.³ However, it was also important in his thinking that a change occur in the group that was to challenge the established order in exploiting the opportunity thus created. The militancy that was characteristic of the National Association for the Advancement of Colored People (NAACP) and other organizations in this period was fostered by a changing conception of self in relation to whether they would continue to accept oppression without vigorous challenge.

Professor Michael Klarman, a legal scholar, offered a sequence of nonjudicial historical factors that were decisive in beginning to change the attitude of the nation toward the position of African-Americans.

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1. 347 U.S. 483 (1954).

2. DOUG McADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930-1970* (1982).

3. *Id.* at 40.

[D]eep-seated social, political, and economic forces had already begun to undermine traditional American racial attitudes. . . . [such as] World War II, the ideological revulsion against Nazi fascism, the Cold War imperative, the growing political empowerment of northern blacks, the increasing economic and social integration of the nation, and changing southern racial attitudes.⁴

I agree with Klarman and others that, in seeking to understand the *Brown* decision, too much emphasis has been placed on the internal liberalization of the Court in creating the right conditions for *Brown*.⁵

Rather, I suggest that *Brown* and the subsequent Civil Rights movement were created out of the forces of history as indicated by Klarman. The period from the 1930s to the 1950s stimulated the conception of new possibilities of equality for blacks, which led to their new aggressiveness in challenging racism. This militant spirit derived from the "social process" that Mark Tushnet referenced in his work on the NAACP strategy of *Brown*, when he said that "the NAACP's litigation effort illustrates . . . litigation as a social process."⁶ However, as a social process, it *initiated* the challenge to *Plessy v. Ferguson*,⁷ as well as accompanied it.

The well-known legend of the NAACP legal strategy that led to overturning *Plessy* with the *Brown* decision has largely overlooked the overall aggressiveness of the organization in other fields. Therefore, I argue here that the general mood of the black community in opposing the brutality of this period was reflected in the more aggressive thrust of the NAACP in its legal strategy as well as in its general program of political and social involvement. The growing confidence of the organization, as it won legal victories and gained an elevated standing in national politics and government with the coming of the Roosevelt Administration, enabled it to exploit the new atmosphere created by the War.

Thus, I will focus on such environmental factors as the coming of World War II and the promulgation of the "Four Freedoms" by Roosevelt and Churchill; the United Nations and the Universal Declaration of Human Rights; and the opposition to racial discrimination and exclusion of blacks by the Democratic Party. These factors provide some evidence to support the view that the political setting that helped to foster the *Brown* decision also lent great strength to blacks' re-evaluation of their own possibilities and fostered their creation of a

4. Andrew Kull, *Post-Plessy, Pre-Brown: 'Logical Exactness' in Enforcing Equal Rights*, 24 J. SUP. CT. HIST. 155, 160-61 (1999) (quoting Michael J. Klarman, *Brown, Racial Change and the Civil Rights Movement*, 80 VA. L. REV. 7, 14 (1994)).

5. Michael J. Klarman, *Brown, Racial Change and the Civil Rights Movement*, 80 VA. L. REV. 7, 19, 21-29 (1994).

6. MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950*, at 143 (1987).

7. 163 U.S. 537 (1896), *overruled by* *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

new era in American civil rights history. This paper, however, will not analyze the thesis that *Brown* stimulated the Civil Rights movement itself.

II. THE FIERCE FIFTY YEARS

The first fifty years of the twentieth century have been regarded by some scholars as a period wherein after the nineteenth century, blacks experienced racial “segregation” and “discrimination.”⁸ These are actually very moderate, civil terms for the substantial brutalities experienced by a significant portion of the black community in this period. What was actually occurring shattered two regional myths. The first held that the North was the land of opportunity and that blacks would be “free” there and be able to obtain jobs and a decent standard of living.⁹ This myth constantly encountered the second myth, which was that blacks in the South were also free, and aside from the occasional rough treatment blacks suffered, the old South had died in the nineteenth century under the weight of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution.¹⁰

These myths, though containing some truths, were also altered by facts as reflected in the records of the NAACP and the Justice Department that indicated that the old form of slavery existed in the first half of the twentieth century in a robust fashion, where the utilization of black labor changed from the old chattel form to contract labor under the crop-lien system and the convict-lease system. Thus, the convict-lease system, married to the crop-lien system, were widespread practices that kept many blacks in modern slavery.

In the crop-lien system, blacks were worked in a manner that tied them to a place where they were often treated worse than slaves, never allowing them to satisfy their debt. Then, if they left the plantation before having satisfied the impossible debt, they were accused of breaking some aspect of a contract, convicted, and then leased out again to former plantation owners as workers, still unpaid. Thus, the reputed violation of the contract under the crop-lien system was the mechanism by which blacks were criminalized, which made it possible for the new form of slavery to be administered legally under the Thirteenth Amendment through the exception that applied to criminals.

8. James R. Grossman, *A Chance to Make Good: 1900-1929*, in *TO MAKE OUR WORLD ANEW: A HISTORY OF AFRICAN AMERICANS* 345, 389-408 (Robin D.G. Kelly & Earl Lewis eds., 2000); Gordon Hancock, *Race Relations in the United States: A Summary*, in *WHAT THE NEGRO WANTS* 217, 223 (Rayford Logan ed., 1944).

9. Grossman, *supra* note 8; Hancock, *supra* note 8.

10. Walter White inexplicably held the view that with respect to political participation, “[i]n many Southern states Negroes today vote with complete freedom.” WALTER WHITE, *A MAN CALLED WHITE* 91 (1948).

This system lasted far into the twentieth century, parallel to the Civil Rights movement era.¹¹

Lynching also continued during this period. Tuskegee Institute, an African-American college that kept statistics on this brutal practice by whites, found that nearly five thousand blacks had been lynched from 1882 to 1959. During the period from 1940-1954 alone, there were sixty such incidents.¹² Then, there was the raw attack of mob violence by whites on black communities, a practice that also carried over from the period of slavery where blacks were at the physical mercy of whites who used violence as a method of social control. Violence was utilized to suppress the desire of black soldiers returning from World War I to access normal goods and services as citizens in American society. The so-called Red Summer of 1919, which saw riots in both the South and North, continued until 1921 with the Tulsa riot, all of which had blacks as recipients of the damage to their communities.¹³

Nevertheless, such violence was not contained in the South. During the Detroit Riot of June 20-22, 1943, in which three-fourths of the blacks killed were shot by police, more than ninety percent of those arrested were blacks as well, while few whites were arrested and none were shot.¹⁴ These violent incidents in both the North and South give some evidence of the growing challenge by blacks to the hegemony of whites in both regions of the country.

The 1944 report on American race relations, *An American Dilemma*, authored by the renowned Swedish sociologist, Gunnar Myrdal, had a significant impact on the thinking of both blacks and whites.¹⁵ Myrdal argued that the erosion of the old theory of caste, wherein the subordinate condition of blacks was justified because they were considered less than human was "the most important of all social trends in the field of interracial relations."¹⁶ Evidence of this was that black protest was rising and that "the Negro group is being permeated by the democratic and equalitarian values of the American culture."¹⁷ He suggested that there was a war with the whites, which was fought out with blacks utilizing the law as their most formidable weapon.¹⁸

11. 1961 COMMISSION ON CIVIL RIGHTS REPORT, Bk. 5, Employment 272.

12. *Id.* at 268.

13. See AUGUST MEIER & ELLIOTT RUDWICK, BLACK DETROIT AND THE RISE OF THE UAW 110 (1979); see also JOHN HOPE FRANKLIN, FROM SLAVERY TO FREEDOM 483 (3d ed. 1967); Stanley B. Norvell, *A Bloody Smear in the Promised Land, in AFRO-AMERICAN HISTORY: PRIMARY SOURCES* 261-67 (Thomas R. Frazier ed., 1970).

14. *Editorials*, THE CRISIS, July 1943, at 199.

15. GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (1962).

16. 2 *id.* at 1002-03.

17. 2 *id.* at 1003.

18. 2 *id.* at 1008-09.

Moreover, blacks in the North were moving away from rank-subordinate status to enjoy a greater measure of freedom, while blacks in the South were growing more uneasy with their oppression. For example, a Southern black minister, Dr. J.S. Nathaniel Tross, said, "I am afraid for my people. They have grown restless. They are not happy. They no longer laugh. There is a new policy among them—something strange, perhaps terrible."¹⁹ In any case, Myrdal felt that "the treatment of the Negro [was] America's greatest and most conspicuous scandal" and that the resolution of this problem entailed America closing the moral gap between this treatment and America's professed democratic character as a nation.²⁰

This era of violence would complicate an untrammelled expression of black loyalty in the challenge of concluding that blacks should participate in World War II. This led the highly regarded black historian, Professor John Hope Franklin, to conclude that "[i]t did not take some foreign ideology or some home-grown radicalism to understand that the carefully cultivated racism in the United States was a powerful force for evil and that the bitterness of African Americans was carefully nurtured by military and public policy."²¹ Citing Eleanor Roosevelt's feeling that "the nation cannot expect colored people to feel that the United States is worth defending if the Negro continues to be treated as he is now,"²² Franklin went on to describe the "emotional conflicts and frustrations that African Americans experienced as they sought to reconcile the doctrine of the four freedoms [in the Atlantic Charter] with their own plight."²³ This issue will be discussed at greater length below.

III. THE NORTHERN MYTH

The myth of freedom up North drove many blacks to migrate out of the South in an effort to escape the terrorism, indignity, and low opportunity structure of the South, an impetus that pushed them into the teeming cities of Chicago, Detroit, Philadelphia, New York, Washington, D.C., Kansas City, Missouri, and other such places. For many, this resulted in better pay, yielding more disposable income with which they could afford modern consumer goods and somewhat better treatment.²⁴ Nearly all blacks, however, experienced tight segregation in the use of public accommodations and housing, and various forms

19. 2 *id.* at 1013.

20. 2 *id.* at 1020-22.

21. John Hope Franklin, *A Half-Century of Presidential Race Initiatives: Some Reflections*, 2 J. SUP. CT. HIST. 226, 227 (1999).

22. *Id.* at 228.

23. *Id.* at 227.

24. KARL E. TAEUBER & ALMA F. TAEUBER, NEGROES IN CITIES: RESIDENTIAL SEGREGATION AND NEIGHBORHOOD CHANGE 10-26 (1965).

of discrimination in social settings, employment, and the public culture.

Yet, the sheer movement of hundreds of thousands of black men out of the South through the military draft system placed most of them, for the first time since the World War I generation, in less race-conscious regions of the world like North Africa, Europe, and Asia; thereby creating in them new expectations for the acquisition of just human rights at home. And, as in the first World War, and indeed every war in which they had participated, black American soldiers expected to be treated as citizens in the aftermath, but even more so when they witnessed the actual treatment of black individuals as though they were valued human beings with rights. The war, then, became a force promoting cosmopolitan values for both blacks and whites that contributed to the possibility of both the Civil Rights movement and to the *Brown* decision.²⁵

This syndrome of allowing blacks to taste real human rights was enhanced domestically as well by the efforts of Franklin Delano Roosevelt to pull the country out of the throes of the Depression of the late 1920s and the early 1930s. Roosevelt's New Deal program used relief programs from which blacks benefited, even though such programs were conducted on a racially segregated basis for the most part. Roosevelt, a patrician, sought to advance the social condition of blacks. Much was accomplished through the access of blacks to these programs, which were monitored by the so-called "Black Cabinet," a group of black government officials that he installed in several of the cabinet agencies.²⁶ Their task, established by presidential assistant Harold Ickes, was to include blacks in the service mission of the agencies where they were deployed.

By 1938, in the field of education, all of the Southern states required racial segregation in education, and most other states permitted it at some level. Moreover, in the 1920s, great disparities existed in the relative expenditure of funds on the education of black and white students in secondary education in the South as indicated below.

25. See generally Klarman, *supra* note 5.

26. JOHN B. KIRBY, BLACK AMERICANS IN THE ROOSEVELT ERA: LIBERALISM AND RACE 112 (1980).

Average Per Capita Expenditure of White and Black Students
by State 1926-1928²⁷

<i>State</i>	<i>White</i>	<i>Black</i>
Georgia	\$36.29	\$ 4.59
Mississippi (Hinds County)	\$24.37	\$ 4.77
South Carolina	\$36.10	\$ 4.17
North Carolina	\$98.20	\$66.53

These figures show decisively that resources devoted to education for blacks were woefully unequal, despite the “separate but equal” dictum of *Plessy*, decided twenty years earlier. From 1935 to 1937, while per pupil expenditures for blacks in the South was \$17.04 on average, for white students it was triple that amount, and in Mississippi and Georgia, the expenditure was still five times greater for whites.²⁸ How could this be deemed equal? Although North Carolina maintained a higher education budget for black students, it legally permitted the contradiction of its state constitution, which allowed a school system to be rigidly segregated but forbade unequal treatment on the basis of color.²⁹

IV. THE SOUTHERN MYTH

Professor Howard Odum of the University of North Carolina, a close student of race relations, came to be concerned that the forces surrounding World War II had created an anxiousness that the South was contributing to a crisis of race relations. His work, *Race and Rumors of Race: Challenge to American Crisis*,³⁰ suggested that America was on the verge of a race war with a new “pro-South” nationalism growing. Odum believed that whites were preparing for self-defense in light of a surging black population that contained a new attitude of defiance where “[a] surprisingly large number of the ablest and best Negro leaders conclude[d] sadly that it may be necessary ‘to fight it out.’ ‘We hope not, we pray not, but we don’t know.’”³¹ Odum pointed to a number of incidents of widespread violence between blacks and whites, such as beatings on streetcars, riots, and police brutalities that created tensions in work, sex, travel, education, politics, military services, freedom, and equality of opportunity.³²

This standard of violence defeated the myth by what was called by one observer an “unmeasurable and unbridgeable distance be-

27. TUSHNET, *supra* note 6, at 4-5.

28. THE CIVIL RIGHTS RECORD: BLACK AMERICANS AND THE LAW, 1849-1970, at 210 (Richard Bardolph ed., 1970).

29. *Id.* at 217.

30. HOWARD W. ODUM, RACE AND RUMORS OF RACE: CHALLENGE TO AMERICAN CRISIS (1943).

31. Howard W. Odum, *Crisis in the Making*, THE CRISIS, Dec. 1943, at 360.

32. *Id.*

tween the white South and the reasonable expectation of the Negro.”³³ The danger of the truth of this observation led to the formation of a conference in Durham, North Carolina, in 1943, to work for interracial cooperation, and the result was the establishment of a permanent organization called the Southern Regional Council. It would promote the work of the NAACP and call for a new initiative by the United States Government in race relations.³⁴

In response to this meeting, Ralph McGill, publisher of *The Atlanta Constitution*, called a meeting of one hundred white Southern leaders in Atlanta to consider the demand of the Durham meeting, which opposed segregation, to determine whether the sentiment existed for a collective approach of their own to the problem of pervasive discrimination against blacks. Although they did not accept the demand for the ballot made by the Durham group, they did recognize that discrimination was a “violation of the spirit of Democracy” and that there was a “moral duty of white Southerners to correct the evils of which the Negro justly complains.”³⁵

This would be the context in which race relations in both the North and South would confront World War II, an event that would challenge the intensity of the dehumanization in the twentieth century.

V. THE NAACP EMERGES AND FIGHTS

It should be understood that the NAACP was born in a period of reaction by blacks and liberal whites to the mood that *Plessy* had fostered. From its birth in 1909, the organization reflected the tenor of the times as organizations grew in reaction to the exclusion of blacks from the political system in particular. Indeed, a rash of organizations that emerged in the period of the early 1900s, such as the Niagra Movement, the National Negro American Political League, the Negro National Democratic League, the Black and Tan Republicans, the National Urban League, and others, were illustrative of a sentiment that defied rejection and exclusion. In particular, the platform of the Niagra Movement, regarded as the NAACP immediate predecessor, was illustrative of the driving urgency of the moment. It argued,

We believe that [Negro] American citizens should protest emphatically and continually against the curtailment of their political rights. We believe in manhood suffrage: we believe that no man is so good, intelligent or wealthy as to be entrusted wholly with the welfare of his neighbor.

....

33. *Id.*

34. *Editorials*, *THE CRISIS*, May 1943, at 136.

35. *Id.*

We especially complain against the denial of equal opportunities to us in economic life

. . . .

We refuse to allow the impression to remain that the Negro-American assents to inferiority, is submissive under oppression and apologetic before insults.

. . . .

We repudiate the monstrous doctrine that the oppressor should be the sole authority as to the rights of the oppressed.³⁶

The cultural projections of the Harlem Renaissance reflected that there was a “New Negro” on the scene who was more aggressive than the caricature of the submissive Negro that the movies sought to portray and which the philosophy of Booker T. Washington sought to institutionalize. For instance, the movement of Marcus Garvey involved hundreds of thousands of mobilized blacks in the United States, and the NAACP challenged lynching by protest demonstrations, such as the silent march of 15,000 blacks down a Harlem boulevard.³⁷ Both were evidence of a new militant spirit that challenged the subordinate status of blacks in society.

By 1941, this spirit was illustrated in the threat posed by A. Philip Randolph, head of the black union, The Brotherhood of Sleeping Car Porters, to the Administration of Franklin Delano Roosevelt if it did not desegregate the war industries. Roosevelt reluctantly complied and issued Executive Order 8802 and created the Fair Employment Practice Commission to implement the Order.³⁸ The audacity of such an action was immediately galvanizing to blacks as a bold movement against the government at a time when it was vulnerable in its mobilization of Americans to participate in the war and in the war industries. Indeed, this act was considered by some observers as that which “launch[ed] . . . the modern Civil Rights movement.”³⁹

This spirit was also sublimely evident in the volume, *What the Negro Wants*,⁴⁰ edited by the distinguished black historian Professor Rayford Logan of Howard University. Chapter after chapter in the volume demanded equal rights as indicated by the titles of the articles: *The Negro Wants First-Class Citizenship* (Rayford W. Logan); *What the Negro Wants and How to Get It: The Inward Power of the Masses* (Leslie Pinckney Hill); *The Negro Has Always Wanted the Four Freedoms* (Charles H. Wesley); *The Negro Wants Full Equality* (Roy Wil-

36. *The Niagra Movement*, in *THE BLACK AMERICAN: A DOCUMENTARY HISTORY* 372-74 (Leslie H. Fishel, Jr., & Benjamin Quarles eds., 1970).

37. Roy Wilkins, *The Negro Wants Full Equality*, in *WHAT THE NEGRO WANTS*, *supra* note 8, at 113, 118.

38. FRANKLIN, *supra* note 13, at 426-27; *see also* Franklin, *supra* note 21, at 227-28.

39. DENTON L. WATSON, *LION IN THE LOBBY: CLARENCE MITCHELL, JR.'S STRUGGLE FOR THE PASSAGE OF CIVIL RIGHTS LAWS* 131 (1990).

40. Wilkins, *supra* note 37.

kins); *The Negro Wants Full Participation in American Democracy* (Frederick D. Patterson); *The Caucasian Problem* (George S. Schuyler); and *Count Us In* (Sterling A. Brown).⁴¹ The movement was prepared to exploit the opportunities created by the coming of World War II.

VI. THE INFLUENCE OF WORLD WAR II AND THE ATLANTIC CHARTER

As indicated above, the coming of World War II had been difficult for blacks since it posed a contradiction: on the one hand responding to a demand of patriotism and military service to counter the Nazi invasion of Poland, by their involvement in a wider war in Europe and, on the other hand, their attention to a war in America against the legacy of racism.⁴² Although the NAACP eventually launched a campaign to persuade the reluctant black community to join the crusade against Hitler, Hitlerism at home was not ignored.⁴³ It came in the form of a compromise crafted by James G. Thompson, a black cafeteria worker in the Cessna plant in Wichita, Kansas, who wrote a letter to the editor of *The Pittsburgh Courier*, an important black weekly newspaper.⁴⁴ Thompson asked a series of critical and poignant questions, such as, "Should I sacrifice my life to live half American? Would it be demanding too much to demand full citizenship rights in exchange for the sacrificing of my life? Is the kind of America I know worth defending?"⁴⁵ His answer to these questions took the form of a compromise:

The V for victory sign is being displayed prominently in all so-called democratic countries which are fighting for victory over aggression, slavery, and tyranny. If this V sign means that to those now engaged in this great conflict, then let we colored Americans adopt the double VV for a double victory. The first V for victory over our enemies from without, the second V for victory over our enemies from within. For surely those who perpetrate these ugly prejudices here are seeking to destroy our democratic form of government just as surely as the Axis forces.⁴⁶

In August of 1941, President Roosevelt met with Prime Minister Winston Churchill of England and settled on the goals by which both countries would participate in World War II. The resulting document, known as the "The Atlantic Charter," contained a reference to "Four

41. *Id.* at v.

42. Franklin, *supra* note 21, at 227.

43. Indeed, civil rights protests were launched at the existence of racial discrimination in the armed services and in the award of contracts for work in the civilian industries. *See id.*

44. RONALD TAKAKI, *DOUBLE VICTORY: A MULTICULTURAL HISTORY OF AMERICA IN WORLD WAR II* 20 (2000).

45. *Id.* (quoting James G. Thompson, *Letter to the Editor*, PITTSBURGH COURIER, Jan. 31, 1942).

46. *Id.*

Freedoms,” which established that neither the United States nor Great Britain would seek territorial aggrandizement, that assured all states access to trade and raw materials with regard for their existing obligations, that promoted collaboration with all nations in the economic field, and that promised to disarm all aggressor nations in the context of a wider and permanent system of general security. However, one of the items caught the attention of subject people, the idea of affirming the right of all people to choose their own form of government and to express freely their wishes concerning territorial changes.⁴⁷

In a highly perceptive assessment, Louis Martin, a journalist at a major black newspaper, *The Chicago Defender*, who became in the 1960s and 1970s the longest serving black aid to presidents of the United States, caught the broader mood of race relations in the 1940s. One feature contained in his July 4, 1942, *Saturday Review of Literature* article reflected a concern with the degree to which black editors and other leaders were calling for “a revolution in race relations” in America.⁴⁸ He confirmed that part of their motivation was the Four Freedoms of the Atlantic Charter and the speeches by white leaders characterizing it as an event that signaled a revolution that was aimed to liberate all people saying “[i]t is sheer folly to believe that any racial group with a background in America similar to that of the Negro would not reflect the same attitude.”⁴⁹ He buttressed this by the simple but profound logic that often escapes those who wondered then, “What does the Negro want.”⁵⁰

One grave error in the thinking of those friends who championed his minor causes was the assumption that a dynamic social group would be content with or constrained to follow an ordered pattern of evolutionary progress. Not only the Negro people in America, but many millions of people everywhere

The present world conflict represents a bursting of the bonds of one kind or another which has had repercussions among all of us. The Negro people in America are not isolated and immune to the new social concepts which play so large a part in the present world revolution.⁵¹

Martin’s use of the word “revolution” so frequently elsewhere in his article reflected the temper of the times and the depth of the expectations that this era stimulated among peoples who were oppressed, which included blacks in America. In this he felt that American blacks were becoming aware of their “unique position” in the world

47. See JOHN M. BLUM ET AL., *THE NATIONAL EXPERIENCE* 694 (1963).

48. Louis E. Martin, *To Be or Not To Be a Liberal*, *THE CRISIS*, Sept. 1942, at 285.

49. *Id.*

50. The entire volume edited by Professor Rayford Logan addressed this issue. *WHAT THE NEGRO WANTS*, *supra* note 8.

51. Martin, *supra* note 48, at 285.

order and would begin to take advantage of it to alter the established domestic order.⁵²

These democratic sentiments were expressed not only by blacks, but by American youth. For example, *The Inter-Collegian*, a magazine devoted to college students, surveyed 12,622 students in sixty-three colleges around the country on subjects including race relations. The dominant sentiment represented by seventy-three percent of the students there was headlined in *The Crisis* of September 1943. "In order to implement the Four Freedoms, Americans should be taking steps now to end discrimination against Negroes in the United States."⁵³ These sentiments were tangible proof that some level of agreement existed in society that it was becoming time for America to deal with the problem of racial segregation, violence, and oppression. Evidence of the wider opportunities created by the war, George S. Schuyler, a prominent black intellectual, felt that it was such a positive factor in the progress of blacks that a long war might be in their interest.⁵⁴

VII. THE UNITED NATIONS

The creation of the United Nations (UN) was another important step in the interruption provided by World War II, as the concept of human rights as a centerpiece in a family of nations became the guiding ideal around which the UN was constructed. Issues of the decolonization of Africa and the Third World nations were part of the deliberations, with the venerable Dr. Ralph Bunche, an African-American, having been an important contributor.⁵⁵ Most important was the UN's adoption of the Universal Declaration of Human Rights, the Preamble of which recognized "the inherent dignity and . . . equal and inalienable rights of all members of the human family . . . to justice and peace in the world."⁵⁶ Moreover, Article 1 repeated this principle, and Article 2 confirmed it by stating that every person had such rights "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin."⁵⁷ Article 4 stated that "no one should be held in slavery or

52. *Id.* at 286.

53. *War and Race Relations: Student Opinion*, *THE CRISIS*, Sept. 1943, at 269 (internal quotations omitted).

54. George S. Schuyler, *A Long War Will Aid the Negro*, *THE CRISIS*, Nov. 1943, at 308.

55. Dr. Ralph Johnson Bunche was a former Professor at Howard University and a United States government official who was one of the architects of the United Nations structure, influencing the creation of the Committee on Decolonization of Dependent Territories held by European powers. He went on to be the Undersecretary of the United Nations and the winner of the Nobel Peace Prize for his role in the negotiations that led to the first armistice in the Arab-Israeli War of 1948. See BRIAN URQUHART, *RALPH BUNCHE: AN AMERICAN LIFE* (1993).

56. G.A. Res. 217, U.N. GAOR, U.N. Doc. A/810 (1948), <http://www.un.org/overview/rights.html>.

57. *Id.* at art. 2.

servitude,”⁵⁸ and Article 7 pronounced that all were equal before the law and “are entitled without any discrimination to equal protection of the law,”⁵⁹ which included protection against discrimination. It was easily recognizable that much of the wording that formed the content of these values was derivative from the United States Constitution and its judicial history. What the blacks and all others who read it fully understood was that it had not been accomplished in the internal domestic life of the United States to that point in time.

These new values would be utilized by the black intelligentsia both with reference to the United States and Africa. Dr. W.E.B. Du Bois, the most influential black intellectual of that era, headed a committee, which presented a volume known as *The Atlantic Charter and Africa* to the UN at the end of the war. This volume helped in the process of socializing Americans to the humanizing purposes of the war and, as such, made Hitler appear as an oppositional symbol to human rights, social progress, and all of the liberal tendencies inherent in the pursuit of democratic rights.⁶⁰

An editorial of *The Crisis* also noted that on October 23, 1947, the NAACP had presented to the United Nations a 155-page document known as *A Statement on the Denial of Human Rights to Minorities in the Case of Citizens of Negro Descent in the United States of America and an Appeal to the United Nations for Redress*.⁶¹ The lead drafter, Dr. Du Bois,⁶² put into context the necessity for the document in a brief historical summary of black progress and difficulties in the twentieth century up to the post-War era.⁶³ Du Bois lobbied with the Soviets, the Indians, and others, for the document to be submitted to the United Nations Human Rights Commission, which was considering the adoption of the Universal Declaration of Human Rights. It was thought by the United States State Department to be an embarrassing testimony on the nation’s treatment of black Americans. The State Department view was that its consideration would give fuel to the Soviet Union to discredit the United States in what was becoming a fierce Cold War conflict emerging at that time.

So sensitive was this document that Eleanor Roosevelt, then the United States Representative to the United Nations, scolded Du Bois

58. *Id.* at art. 4.

59. *Id.* at art. 7.

60. See generally THE ATLANTIC CHARTER AND AFRICA FROM AN AMERICAN STANDPOINT (1942).

61. W.E. Burghardt Du Bois, *Three Centuries of Discrimination*, THE CRISIS, Dec. 1947, at 362.

62. *Id.* Other drafters included Dr. Rayford Logan of Howard University; William R. Ming, Jr., Professor, University of Chicago Legal Institute; Milton R. Konvitz, Professor, Cornell University; and Leslie S. Perry of the NAACP Bureau. *Id.*

63. *Id.*

and the NAACP for its submission.⁶⁴ As such, the State Department prevailed upon Walter White, Executive Director of the NAACP, not to push for its presentation to the Human Rights Commission. Eventually, Du Bois was relieved of his role by the NAACP Board of Directors and, as such, was unable to represent the organization's views on the document considered by the Human Rights Commission in Paris.⁶⁵

The inevitable pressure on the organization had worked to sideline Du Bois and render the document inert—a casualty of the emerging Cold War. In any case, at the meeting of the Commission on that December 3, 1947, the Soviet Delegation moved, on the basis of the Report, for a full investigation on the treatment of black Americans in the United States, but the motion was defeated by a vote of four to one.⁶⁶ Du Bois was to wage a losing battle in his deep misgiving that the NAACP, by bowing to the State Department, had become its tool.⁶⁷ He was to lose because the NAACP was not only in life-and-death struggle against American racism but was also protecting its integrity against Communist infiltration as well. The organization was thus caught between both an internal and external threat that gave it few options but to move closer to the government or risk validating the charges of its racial enemies that the organization's leadership and branches were a Communist front.⁶⁸ Thus, the NAACP was to move from militancy and aggressiveness in its political program to a more moderate stance at the beginning of the Civil Rights movement, focusing on political participation, public policy, and its legal arm as its most powerful fighting weapons.

VIII. THE IMPACT OF COSMOPOLITAN INFLUENCES

This paper has discussed the liberalizing tendencies that engendered a new social environment by the black migration to the North, the social programs enacted by Roosevelt, World War II, the Atlantic Charter enunciated by Roosevelt and Churchill, and the values of freedom and equality enunciated in the Universal Declaration of Human Rights. These acted to produce significant opportunities for change in the American political culture that were taken advantage of by the NAACP and other black organizations. As indicated, the

64. DAVID LEVERING LEWIS, *W.E.B. DU BOIS: THE FIGHT FOR EQUALITY AND THE AMERICAN CENTURY, 1919-1963*, at 534 (2000). For a more extensive discussion of the petition presented to the United Nations, see also ROBERT H. BRISBANE, *THE BLACK VANGUARD: ORIGINS OF THE NEGRO SOCIAL REVOLUTION, 1900-1960*, at 196-99 (1970).

65. LEWIS, *supra* note 64, at 534.

66. BRISBANE, *supra* note 64, at 199.

67. *Id.*

68. In this respect, see FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, FBI REPORT: William Edward Burghardt Du Bois (Dec. 29, 1950).

NAACP in particular focused on political and public policy, both of which contributed to its legal strategy.

A. *Black Politics*

Blacks were also becoming more aggressive in politics. The NAACP held a meeting of nearly thirty black leaders on November 20, 1944, to formulate an approach to the presidential election of that year. Blacks had begun to vote for Democratic candidates in 1932 as their support swung to Franklin Delano Roosevelt, who promised the nation that he would begin to use the power of the Federal Government to pull them out of the Depression of the late 1920s. Insofar as he accomplished this, blacks benefited from President Roosevelt's social programs and became in 1936, 1940, and 1944 a loyal part of the Roosevelt constituency.⁶⁹ Nevertheless, this meeting was called to declare the political importance of the black vote, to signal that it belonged to no party, and to demand that it "could no longer be won by meaningless generalities in party platforms which are promptly forgotten on election day."⁷⁰ The meeting issued a formal Declaration that referred to the seventeen or more states where the black vote was a "balance of power," and to the intention of black voters to turn out of office any public official who had not made a record of "liberal and democratic action."⁷¹ Most important, the Declaration contained the inference of the agenda that blacks were pursuing at that time in the following statement:

The party or candidate who refuses to help control prices, or fails to support the extension of social security, or refuses to support a progressive public program for full post war employment, or opposes an enlarged and unsegregated program of government financed housing, or seeks to destroy organized labor, is as much the enemy of the Negro as is he who would prevent the Negro from voting.⁷²

Other issues, such as opposition to lynching and unrestrained violence, integration of the armed services, and Fair Employment Practices, in particular, were also critical voting issues. These issues were punctuated by the sentiment addressed to both parties that "the Negro has come of age politically" as the election of 1948 would show.⁷³

The migration of blacks to the Northern cities and its new alliance with the Democratic Party began to affect the bond between the white North and South that was cemented with *Plessy*. That bond was

69. BRISBANE, *supra* note 64, at 221-36.

70. *A Declaration by Negro Voters*, THE CRISIS, Jan. 1944, at 16.

71. *Id.*

72. *Id.* Also, this sentiment had been expressed by NAACP officials as early as 1934. Walter White, for example, stated as much to Eleanor Roosevelt by letter, before the 1934 election. See KIRBY, *supra* note 26, at 182-83.

73. *A Declaration by Negro Voters*, *supra* note 70, at 17.

not essentially concerned with the disparate issues represented by the Democratic and Republican political parties but with their unity with respect to the continued subjugation of the Negro.

Further proof that the marriage made between Northern and Southern whites by way of the *Plessy* doctrine of racial segregation had begun to come apart on race relations was that other party conventions also contained civil rights planks in their platforms. For example, the Republican Party, not to be outdone, while suggesting that it was their belief that the primary responsibility was vested in states to control their domestic institutions, said that the Federal Government should take action to oppose discrimination against race, religion, or national origin.⁷⁴ Similar such proposals were included in the platforms of the Communist Party and the Progressive Party. Only the States Rights Party and the Christian Nationalist Party stood staunchly for racial segregation.⁷⁵

The Republican Party position was couched in a way that would continue to curry favor with the Southern voters, yet begin to recognize the growing mood of racial tolerance in the North. This was the key to the fact that some liberalization had begun to take shape at the state level, such that eighteen states (all in the North) had passed non-discrimination statutes in matters of public accommodations and entertainment by 1949.⁷⁶ In education, nondiscrimination laws were active in sixteen states relating to public schooling, five relating to private schools, and one relating to state universities.⁷⁷

One might observe this to the extent that civil rights issues were also included in the 1948 platform of the Democratic Party in the Convention politics in July of that year. When the platform came to a vote on the floor, Hubert Humphrey, Mayor of Minneapolis and liberal leader of the Northern bloc, made an aggressive speech, denouncing racism and declaring that the Democratic Party was 172 years behind the times.⁷⁸ With that, and perceiving defeat, the Southern delegates walked out, led by Strom Thurmond of South Carolina.⁷⁹

74. THE CIVIL RIGHTS RECORD: BLACK AMERICANS AND THE LAW, 1849-1970, at 249 (Richard Bardolph ed., 1970).

75. *Id.* at 248.

76. STATES' LAWS ON RACE AND COLOR 8 (Pauli Murry ed., Univ. of Ga. Press 1997) (1950).

77. STATES' LAWS ON RACE AND COLOR chart II (Pauli Murray ed., 1950).

78. Vincent Harding et al., *We Changed the World, in TO MAKE OUR WORLD ANEW*, *supra* note 8, at 449; *see also* HANES WALTON, JR., BLACK POLITICAL PARTIES: AN HISTORICAL AND POLITICAL ANALYSIS 75 (1967).

79. *See* Harding, *supra* note 78, at 449.

B. *Public Policy: The Truman Commission*

President Harry Truman sounded the theme of opposition to discrimination that reflected the impact of the cosmopolitan forces unleashed by the war in his 1947 speech to the annual convention of the National Association for the Advancement of Colored People. He recognized that there should be no reason for discrimination, that it constituted a limitation on the opportunity of every American to enjoy their citizenship rights, and pledged—even though it would be difficult—to deploy the machinery of the Federal Government to aid in the task of eliminating this barrier. To this end, he proposed the permanence of the Civil Rights Commission that he had impaneled earlier in the year, which issued the groundbreaking report, *To Secure These Rights*, on February 2, 1948, in a message to Congress.⁸⁰

By 1947, this sentiment would become publicly manifest as the NAACP would both support President Harry Truman in his establishment of the Commission on Civil Rights and praise its final report, *To Secure These Rights*, which had legitimized the struggle of the NAACP from the very highest levels of government and had confirmed “all of the evils of secondary citizenship that colored Americans have been voicing for a generation.”⁸¹ Professor Franklin rendered an assessment that envisaged the impact of the Myrdal study when he observed that the report argued that

the persuasive gap between our aims and what we actually do is creating a kind of moral dry rot which eats away at the emotional and rational basis of democratic beliefs It is impossible to decide who suffers the greatest moral damage from our civil rights transgressions, because all of us hurt.⁸²

It should also be noted that the legal effort of the NAACP was aided by the Truman Commission’s Report in this effort.⁸³ The Commission, according to Jack Greenberg, former NAACP attorney, called for strengthening civil rights by supporting “the right to safety and security of the person, the right to citizenship and its privileges, the right to freedom of conscience, and the right to equal opportunity”; it also expressed a will to defeat lynching.⁸⁴ Another impact of the Truman Commission’s Report of 1947 was that not only did it call for the implementation of these recommendations for progress on

80. FRANKLIN, *supra* note 13, at 609.

81. *Editorials*, THE CRISIS, Dec. 1947, at 361.

82. Franklin, *supra* note 21, at 230 (internal quotations omitted).

83. TUSHNET, *supra* note 6, at 116. For instance, after the issuance of the Report, *To Secure These Rights*, Truman’s Attorney General, Tom Clark, took a number of steps in the direction of facilitating the initiatives of the NAACP. First, he filed a brief in support of NAACP cases that they had brought in opposition to restrictive housing covenants. And he also decided to expand the Civil Rights division of the Justice Department to allow for greater access by groups seeking various justice claims. *Id.*

84. Franklin, *supra* note 21, at 229.

civil rights through legislation, but they were also included by President Truman in the platform of the Democratic Party in 1948. These actions constituted a major beachhead in the modern struggle for civil rights.

IX. PRESSURING THE COURTS TO CHANGE

Promising equality for blacks in the nineteenth century after the Civil War, the Fourteenth Amendment to the Constitution was all but denuded in the twentieth century, and it was toward the resurrection of the original intent of this Amendment that the NAACP would shape its battles. The courts had continued on a duplicitous course in the twentieth century, with the intent of the Fourteenth Amendment to empower blacks being recognized in some places and the doctrine of *Plessy* being followed in others. For example, in an opinion by Justice Day in 1917, in a case involving the right of a black person to purchase property in Louisville, Kentucky, in violation of an ordinance permitting racial discrimination, the Justice invoked the Reconstruction Amendments to the Constitution to permit the sale.

It [the Fourteenth Amendment] was designed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the general government, in that enjoyment, whenever it should be denied by the States. It not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any State the power to withhold from them the equal protection of the laws, and authorized Congress to enforce its provisions by appropriate legislation.

What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color?⁸⁵

This understanding of the Fourteenth Amendment to the Constitution, which Justice Day suggested was now settled law,⁸⁶ guided the fight of the NAACP throughout the '30s, '40s, and '50s, until victory was won with the *Brown* decision.

In an environment where *Plessy* had given both legal and social legitimacy to segregation and, thus, to the avoidance of the enforcement of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution in the first half of the twentieth century, in the second half of the twentieth century the NAACP pushed the courts to return to the original interpretation of these amendments, which would pro-

85. *Buchanan v. Warley*, 245 U.S. 60, 77 (1917).

86. *See id.* at 82.

duce their intended effect. For example, in the area of voting rights, the United States Supreme Court, in *Smith v. Allwright*,⁸⁷ invalidated the so-called white primary as state action, which was prohibited by the Fourteenth and Fifteenth Amendments. Immediately, the State of Alabama passed an amendment attempting to define political parties in that state as private organizations beyond the reach of the amendments. In the case *Davis v. Schnell*,⁸⁸ an Alabama district court said that the restrictive voting requirements legitimized by the State of Alabama for participation in its primary were still inconsistent with the intent of the amendments. The language of the court in part stated, “We cannot ignore the impact of the Boswell Amendment upon Negro citizens [merely] because it avoids mention of race or color; ‘To do this would be to shut our eyes to what all others than we can see and understand.’”⁸⁹ This decision was affirmed by the United States Supreme Court.⁹⁰

There was a tradition in the enactment of laws relating to race in the last twenty-five years of the nineteenth century and in the first thirty-five years of the twentieth century, which recognized the pre-eminence of white supremacy in any question where the relative advantage between blacks and whites was concerned. Importantly, however, *Davis* recognized the original intent of the Fourteenth Amendment to protect blacks from discrimination and elevate them to equality with whites.

The growing sensitivity of the Court to the original intent of the Fourteenth Amendment was also evident in its decisions relating to education that responded to the action of the NAACP lawyers, who sought to drive the logic of *Plessy* into an untenable legal position. For example, in the case *Missouri ex rel. Gaines v. Canada*⁹¹ of 1938, the Court said that what was important about the fact that the State of Missouri made higher education grants available to blacks to attend colleges in other states was that the option afforded an opportunity equal to the institutions in that state. Then, in the *Sipuel v. Board of Regents of the University of Oklahoma*⁹² case, the United States Supreme Court rejected the position of the State that the opportunity for Ms. Sipuel to attend law school on a separate-but-equal basis would be afforded when a separate law school for blacks was built, reasoning that the opportunity must exist in the present. This understanding led

87. 321 U.S. 649 (1944).

88. 81 F. Supp. 872 (S.D. Ala. 1949), *aff'd per curiam*, 336 U.S. 933 (1949).

89. *Id.* at 881 (quoting *United States v. Butler*, 297 U.S. 1, 61 (1936)).

90. *Davis v. Schnell*, 336 U.S. 933, 933 (1949).

91. 305 U.S. 337 (1938).

92. 332 U.S. 631 (1948).

to the decision in *Parker v. University of Delaware*⁹³ to admit a black student to a white state college because the black college was inferior.

Indeed, the NAACP had chosen to attack the legacy of *Plessy* as a deliberate strategy. Professor Genna Rae McNeil says that when the venerable attorney, Charles Hamilton Houston, took over the NAACP Legal and Educational Defense Fund, he wrote a memorandum stressing that education would be one of those areas emphasized.⁹⁴ It was important that the memorandum mentioned higher education, and it was through the various cases dealing with higher education in the period 1935-1950 that led to the decision in *Brown*. The irony was that *Brown* had a profound effect not most immediately in higher education but in elementary and secondary education.

The adoption of a clear strategy of confronting general segregation directly was pushed most consistently by Thurgood Marshall. Between 1946 and 1950, strong currents both within the organization and among its legal clients, such as black teachers fighting for pay equalization, found it difficult to entertain the notion of an all-out assault on racial segregation in education, fearing a threat to their employment.⁹⁵ In 1947, a powerful black attorney in Texas established the Texas Conference on the Equalization of Educational Opportunities, a direction that was opposed by Marshall since it argued that blacks should make the best of their situation and operate within a segregated educational context. In response, Marshall urged the NAACP to clarify its position, and therefore the Board issued the following statement:

[I]t is our policy that the N.A.A.C.P. will not undertake any case or cooperate in any case which recognizes or purports to recognize the validity of segregation statutes or ordinances; the N.A.A.C.P. will likewise not participate in any case which has as its direct purpose the establishment of segregated public facilities.⁹⁶

By 1950, however, the strategy of the NAACP had been fully deployed as revealed in the *Sweatt v. Painter*⁹⁷ decision, where a black person sued for admission to the University of Texas Law School. The plaintiff argued, "It is clear not only that the *Plessy* doctrine . . . has not provided equality, but [it] can never provide the equality required by the 14th Amendment."⁹⁸ The Court decided in *Sweatt* that separate law schools were not equal. In a roughly similar concept, the Court in *McLaurin v. Oklahoma State Regents*⁹⁹ that same year found that even though McLaurin was admitted to graduate study, his segre-

93. 75 A.2d 225 (Del. Ch. 1950).

94. See AFRICAN AMERICANS AND THE LIVING CONSTITUTION 41-43 (John Hope Franklin & Genna Rae McNeil eds., 1995).

95. TUSHNET, *supra* note 6, at 107.

96. *Id.* at 115.

97. 339 U.S. 629 (1950).

98. THE CIVIL RIGHTS RECORD, *supra* note 74, at 273.

99. 339 U.S. 637 (1950).

gation and different treatment within the institution was unlawful.¹⁰⁰ As a result, Thurgood Marshall reached the conclusion that “[w]hether we want it or not, we are now faced with the proposition of going into the question of segregation as such.”¹⁰¹

The boldness of Marshall was partially predicated on the recent United States Supreme Court victories and, as Tushnet would point out, also rested on the expansive foundation that the organization had achieved since the 1930s in an increased membership that grew between 1940 and 1946 from 50,000 to over 450,000; and in its budget, which grew from over \$54,000 in 1930 to over \$300,000 by 1947. This enabled Marshall to gain the necessary financial and legal support for a direct action strategy that had been previously missing. So, three weeks after the victories in *Sweatt* and *McLaurin*, he initiated a conference on NAACP legal strategy in Atlanta, Georgia, the outcome of which was the formalization of the strategy of direct attack on the doctrine of *Plessy*.¹⁰² Indeed, an editorial in *The Crisis* in the fall of 1951 suggested that it was time to explain the position of the organization on “the burning issue of segregation in public education,” revealing the following conclusion of the deliberations at the Atlanta Conference: “The Association is for the direct attack. The legal staff, the board of directors, the annual conventions, and several NAACP state conferences all agree on this approach after more than eighteen years spent in examining the Association’s anti-segregation program.”¹⁰³

The Importance of the United States Supreme Court

The performance of the Court as a judicial body in this era was vital and strategic inasmuch as Congress was largely opposed to the passage of substantive civil rights legislation. Professor Gary Orfield suggests that the recalcitrance of Congress in this period was a formidable barrier to the promotion of civil rights legislation.¹⁰⁴ As evidence, the legislative proposals developed pursuant to President Truman’s Civil Rights Commission recommendations had died in Congress. Nevertheless, the coming of Dwight D. Eisenhower to the presidency was not as significant in this regard, since he was focused on a narrower range of issues than Truman, such as the desegregation of the military. Eisenhower did mount other initiatives in the field of civil rights after the *Brown* decision.

100. *Id.* at 642.

101. TUSHNET, *supra* note 6, at 128.

102. *Id.* at 136.

103. Editorial, THE CRISIS, Sept. 1951, at 432.

104. Gary Orfield, *Congress and Civil Rights: From Obstacle to Protector*, in AFRICAN AMERICANS AND THE LIVING CONSTITUTION, *supra* note 94, at 144-47.

Nevertheless, the responsibility of Congress was perceived to be critical in the protection of the citizenship rights of newly freed slaves. In the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, there is an important phrase at the end of each that asserts that through legislation, Congress has the power to enforce each Amendment.¹⁰⁵ In the nineteenth century, this cession of power to Congress over the several states was an important flashpoint in the debate about federalism and the relative power of the states over the national government that, in these cases, weighted the balance in favor of government at the national level. In the twentieth century, however, these Amendments were all overturned by the necessity of the white North and the white South to reunite after the Civil War in a consensus about race that elevated whites and subordinated blacks from *Plessy* to the advent of *Brown*. This meant that Congress was not likely to have taken strong initiatives to restore the meaning of these Amendments to their original intent.

The philosophical connection between the recommendations of the Truman Commission Report, *To Secure These Rights*, which were clearly designed to initiate social progress for blacks that would diminish racial discrimination and the new tenor of the United States Supreme Court with regard to the Fourteenth Amendment, constituted a reaffirmation of faith in the justice of the civil rights thrust. As such, it emboldened the NAACP to continue to pursue this direction of its legal strategy to affect that result.¹⁰⁶

X. CONCLUSION: THE STAGE IS SET FOR *BROWN*

That *Plessy* promised that blacks could live an adequate life with whites in an America that was “separate but equal,” constantly clashed with the reality of the treatment of blacks as contained in the myth of freedom and democracy resident in both the North and South. These myths were shattered by the liberalizing forces of World War II. That conflict began to pull apart the racial consensus between the white North and the white South that had been effected after the Civil War, creating space for an aggressive movement by blacks to make the promises become reality. This was the environment that created the Civil Rights movement of which the *Brown v. Board of Education* decision by the United States Supreme Court was one of the initiating stimuli. In fact, so confident was the NAACP as a result of this thrust, that it posited the goal in 1953 of being “free by ‘63,” establishing another myth that freedom could come through the new

105. U.S. CONST. amend. XIII, § 2; U.S. CONST. amend. XIV, § 5; U.S. CONST. amend. XV, § 2.

106. See “*To Secure These Rights*,” *THE CRISIS*, Jan. 1948, at 10.

coalition of the legal and political strategies of the organization combined with the newly acquired assistance of the government to affect public policy.

In any case, what created the idea in the minds of many that *Brown* began the Civil Rights movement was a striking series of events sewn together by Jack Greenberg, who observed that “[f]our days after *Brown* a civil rights leader in Montgomery threatened a boycott if humiliating seating policies aboard city buses were not improved.”¹⁰⁷ A pivotal person in that saga, Rosa Parks was the NAACP Secretary in that city and believed that *Brown* had helped to create in blacks the belief that they could successfully challenge segregation laws.¹⁰⁸ Greenberg went on to say that “[Dr.] Martin Luther King held prayer pilgrimages on May 17 each year, the anniversary of the true *Brown* decision. Inspired in part by *Brown*, sit-in demonstrators began their protests in 1960 The freedom rides started as a commemoration of *Brown*.”¹⁰⁹ Then, *Brown* substantially increased the stature of the NAACP, the largest Civil Rights organization, which used the victory to expand the fight to affect the local implementation of the decision.

Nevertheless, it should be concluded that the same forces we have discussed here, which provided the opportunity for *Brown*, were pervasive in their impact upon all of society and led to the skillful and aggressive exploitation of the opportunities created by the NAACP and other organizations. This, no doubt, stimulated social movement on several fronts toward challenging not only the doctrine of *Plessy*, but its symbolic importance to the entire system of racial subjugation. And although other organizations joined the NAACP in their acknowledgment of the role of *Brown* in setting the stage for the Civil Rights movement, it was undeniably the sagacity of its leadership and the aggressiveness of its challenge to racism long before 1954 that made this final chapter possible.

107. Jack Greenberg, *If . . .*, 2 J. SUP. CT. HIST. 181, 188 (1999) (footnote omitted).

108. *Id.*

109. *Id.*

